

BY HAND**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE**Application of: BENFEY *et al.*

Application No.: 09/265,585

Group Art Unit: 1646

Filed: November 5, 1998

Examiner: E. Kemmerer

For: SCARECROW GENE, PROMOTER
AND USES THEREOF

Attorney Docket No.: 5914-066-999

RECEIVED
DEC 6 2001
OFFICE OF PETITIONS**PETITION UNDER 37 C.F.R. § 1.10(c) FOR CORRECTION OF FILING DATE**Assistant Commissioner for Patents
Washington, D.C. 20231

Sir:

Please correct the filing date of the following papers, which were timely filed on

September 12, 2001 in response to Paper No. 13 dated March 12, 2001:

- (1) Response to Restriction Requirement and Amendment Under 37 C.F.R.
§1.111 with Exhibits A and B;
- (2) Amendment Fee Transmittal Sheet;
- (3) Petition for Extension of Time Under 37 C.F.R. §1.136(a);
- (4) Supplemental Information Disclosure Statement and List of References Cited
listing references BW-BZ and CA-CF, together with a copy of each of
references BW, CA, CB, CD and CF;
- (4) Substitute Sequence Listing in Paper and Computer Readable Form;
- (5) Transmittal of Sequence Listing;
- (6) Request for Correction of Filing Receipt; and
- (7) Change of Correspondence Address, jointly referred to herein as the "Reply."

We note that a Communication dated November 6, 2001 erroneously states that Paper No. 19, and the other above-identified papers constituting the Reply of September 12, 2001, were filed on September 13, 2001.¹ Paper 19, and the other papers constituting the Reply, were deposited as Express Mail with the U.S. Postal Service on September 12, 2001, under Express Mail No. EL-501641534-US. Enclosed herewith is:

- (1) Exhibit 1, a copy of the returned yellow post-card receipt as originally filed with the Reply, bearing Express Mail No. EL-501641534-US, incorrectly stamped received by the U.S. Patent and Trademark Office on September 13, 2001;
- (2) Exhibit 2, a redacted copy of Pennie & Edmonds LLP's Express Mail postal log for September 12, 2001, with a Certification by Anthony Ali affirming that he deposited the relevant papers with the U.S. Postal Service as Express Mail on September 12, 2001; and
- (3) Exhibit 3, a true copy of the front and reverse sides of Express Mail Receipt No. EL-501641534-US stamped September 12, 2001 by the U.S. Postal Service and having the date "9/12/2001" written in by the postal clerk on that day.

¹ According to a Notification Related to Events of September 11, 2001 posted at the U.S. Patent and Trademark Office website, an interruption in Postal Service was in effect on September 12, 2001 for the borough of Manhattan. However, as evidenced by the documents submitted herewith and the Certification by Anthony Ali affirming that he deposited the relevant papers with the U.S. Postal Service as Express Mail on September 12, 2001, the U.S. Post Office at which the deposit was made (Bryant Station) was in fact open.

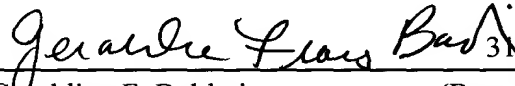
The Express Mail Receipt correctly sets forth the filing date of Paper No. 19 (and the other above-identified papers constituting the Reply of September 12, 2001) as September 12, 2001.

Applicants request that the correct filing date of Paper No. 19, and the other above-identified papers constituting the Reply of September 12, 2001, be entered into the record of the above-identified application.

If any fee is determined to be required for this Petition, please charge such fee to Pennie & Edmonds LLP deposit account no. 16-1150.

Respectfully submitted,

Date: December 5, 2001


Geraldine F. Baldwin (Reg. No.) 31232

PENNIE & EDMONDS LLP
1155 Avenue of the Americas
New York, New York 10036-2711
(212) 790-9090

Enclosures

Express Mail No. EL 501 641 534 US

Date Mailed: September 12, 2001
Serial No.: 09/265,585
Filed: March 10, 1999
Applicant: Benfey et al.
FOR: SCARECROW GENE, PROMOTER AND USES THEREOF

The stamp of the Patent Office hereon shall be taken as an acknowledgment of the date stamped receipt of the following:

1. Response to Restriction Requirement and Amendment Under 37 C.F.R. § 1.111 with Exhibits A (marked up version of replacement paragraphs of the specification) and B (list of the claims pending after entry of the amendment);
2. Amendment Fee Transmittal Sheet;
3. Petition for Extension of Time Under 37 C.F.R. § 1.136(a);
4. Supplemental Information Disclosure Statement and List of References Cited listing references BW-BZ and CA-CF, together with a copy of each of references BW, CA, CB, CD and CF;
5. Substitute Sequence Listing in Paper and Computer Readable Form;
6. Transmittal of Substitute Sequence Listing;
7. Request for Correction of Filing Receipt; and
8. Change of Correspondence Address.

File No. 5914-066

Sender: GFB/AMS

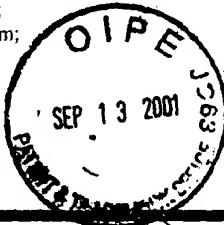
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Express Mail No. EL 501 641 534 US

Date Mailed: September 12, 2001
Serial No.: 09/265,585
Filed: *BN* March 10, 1999
Applicant: *BN* Benfey et al.
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7. Request for Correction of Filing Receipt; and
8. Change of Correspondence Address.



File No. 5914-066

Sender: GFB/AMS

EL501641534US

DATE: SEPTEMBER 12, 2001

THE EXPRESS MAIL NUMBER OF THE DAY IS: EL 501 641 534 US

THE PERSON TAKING EXPRESS MAIL
TO THE POST OFFICE IS: ANTHONY ALI

EXPRESS MAIL CERTIFICATION

"Express Mail" label No. EL 501 641 534 US
Date of Deposit SEPTEMBER 12, 2001 I hereby certify
that the below-listed papers or fees were inserted into a
package that was addressed to the Assistant Commissioner For
Patents, Washington, D.C. 20231 and was deposited by me with
the United States Postal Service "Express Mail Post Office
Addressee" service under 37 C.F.R. 1.10 on the date indicated
above.

Signature *Anthony Ali*

Date: 9-12-01

REDACTED

BALDWIN
SCHNEIDERMAN
AN

5914-066

PET. FOR EXT. OF TIME,
RESPONSE TO RESTRICTION
REQ. AND AMENDMENT UNDER
37 CFR §1.111 W/EXHIBITS
A, AMENDMENT FEE
TRANSMITTAL SHEET,
SUPPLEMENTAL IDS W/ REFS
CITED BY APPLICANT-BW-BZ
AND CA=CF, SUBSTITUTE
SEQUENCE LISTING IN PAPER
AND COMPUTER READABLE
FORM, TRANSMITTAL OF SUB.
SEQ. LISTING, REQUEST FOR
CORRECTION OF FILING
RECEIPT, CHANGE OF
CORRESPONDENCE ADDRESS

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ON INSURANCE COVERAGE

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ORIGIN (POSTAL USE ONLY)		
PO ZIP Code 10026	Day of Delivery <input checked="" type="checkbox"/> Next <input type="checkbox"/> Second	Flat Rate Envelope <input type="checkbox"/>
Date In Mo. 9 Day 12 Year 2001	<input type="checkbox"/> 12 Noon <input checked="" type="checkbox"/> 3 PM	Postage \$ 70.45
Time in <input type="checkbox"/> AM 1452 <input type="checkbox"/> PM	Military <input type="checkbox"/> 2nd Day <input type="checkbox"/> 3rd Day	Return Receipt Fee
Weight lbs. 8 ozs.	Int'l Alpha Country Code	COD Fee Insurance Fee
No Delivery <input type="checkbox"/> Weekend <input type="checkbox"/> Holiday	Acceptance Clerk Initials AA	Total Postage & Fees \$ 70.45

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<input type="checkbox"/> WAIVER OF SIGNATURE (Domestic Only): Additional merchandise insurance is void if waiver of signature is requested. I wish delivery to be made without obtaining signature of addressee or addressee's agent (if delivery employee judges that article can be left in secure location) and I authorize that delivery employee's signature constitutes valid proof of delivery. <input type="checkbox"/> NO DELIVERY <input type="checkbox"/> Weekend <input type="checkbox"/> Holiday	
FROM: (PLEASE PRINT) PENNIE & EDMUNDS LLP 1155 AVENUE OF THE AMERICAS 17TH FL NEW YORK NY 10036-2711	TO: (PLEASE PRINT) ASSISTANT COMMISSIONER FOR PATENTS WASHINGTON DC 20231-9999

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A notice is left for the addressee when an item cannot be delivered on a first attempt. If the item cannot be delivered on the second attempt and is not claimed by the addressee within five days of the second attempt, it will be returned to sender at no additional postage.

Please consult your local Express Mail directory for noon and 3 p.m. delivery areas and for information on international and military Express Mail services. See the *Domestic Mail Manual* for details.

Insurance Coverage: Insurance is provided only in accordance with postal regulations in the *Domestic Mail Manual* (DMM) and, for international shipments, the *International Mail Manual* (IMM). The DMM and IMM set forth the specific types of losses that are covered, the limitations on coverage, terms of insurance, conditions of payment, and adjudication procedures. Copies of the DMM and IMM are available for inspection at any post office. If copies are not available and information on Express Mail insurance is requested, please contact postmaster prior to mailing. The DMM and IMM consist of federal regulations, and USPS personnel are NOT authorized to change or waive these regulations or grant exceptions. Limitations prescribed in the DMM and IMM provide, in part, that:

- The contents of Express Mail shipments defined by postal regulations as merchandise are insured against loss, damage, or rifling. Coverage up to \$500 per shipment is included at no additional charge. Additional merchandise insurance up to \$5,000 per shipment may be purchased for an additional fee; however, additional insurance is void if waiver of the addressee's signature is requested.
- Coverage extends to the actual value of the contents at the time of mailing or the cost of repairs, not to exceed the limit fixed for the insurance coverage obtained.
- Items defined by postal regulations as "negotiable items" (items that can be converted to cash without resort to forgery), currency, or bullion are insured up to a maximum of \$15 per shipment.
- For International Express Mail shipment, insurance coverage may vary by country and may not be available to some countries. Indemnity is not paid for items containing coins, banknotes, currency notes (paper money); securities of any kind payable to the bearer; traveler's checks; platinum, gold, and silver (manufactured or not); precious stones, jewelry, and other valuable or prohibited articles.
- Items defined by postal indemnity regulations as nonnegotiable documents are insured against loss, damage, or rifling up to \$500 per shipment for document reconstruction, subject to additional limitations for multiple pieces lost or damaged in a single catastrophic occurrence. Document reconstruction insurance provides reimbursement for the reasonable costs incurred in reconstructing duplicates of negotiable documents mailed. Document reconstruction insurance coverage above \$500 per shipment is NOT available, and attempts to purchase additional document insurance are void.
- No coverage is provided for consequential losses due to loss, damage, or delay of Express Mail, or for concealed damage, spoilage of perishable items, and articles improperly packaged or too fragile to withstand normal handling in the mail.

COVERAGE, TERMS AND LIMITATIONS ARE SUBJECT TO CHANGE. Please consult *Domestic Mail Manual* and *International Mail Manual* for additional limitations and terms of coverage.

Claims: Original customer receipt of the Express Mail label must be presented when filing an indemnity claim and/or for a postage refund.

1. All claims for delay, loss, damage, or rifling must be made within 90 days of the date of mailing; for international, call 1-800-222-1811.
2. Claim forms may be obtained and filed at any post office.
3. To file a claim for damage, the article, container, and packaging must be presented to the USPS for inspection. To file a claim for loss of contents, the container and packaging must be presented to the USPS for inspection. **PLEASE DO NOT REMAIL. THANK YOU FOR CHOOSING EXPRESS MAIL.**